

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 22 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 92-297

DOCKET FILE COPY ORIGINAL

In the Matter of)
)
Rulemaking to Amend Parts 1, 2, 21 and 25)
of the Commission's Rules to Redesignate)
the 27.5 - 29.5 GHz Frequency Band, to)
Reallocate the 29.5 - 30.0 GHz Frequency)
Band, to Establish Rules and Policies)
for Local Multipoint Distribution Service)
and for Fixed Satellite Services)

REPLY COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast") hereby submits its reply comments on the
Commission's *Fourth Notice of Proposed Rulemaking* in the above-captioned proceeding.^{1/}

INTRODUCTION

Last year, in its *Third Notice of Proposed Rulemaking*,^{2/} the Commission asked whether
incumbent local exchange carriers ("LECs") and cable operators should be barred from obtaining
Local Multipoint Distribution Service ("LMDS") licenses in their existing service areas. As the
Commission has noted, most commenting parties -- including Comcast -- opposed any such

^{1/} See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to
Redesignate the 27.5 - 29.5 GHz Frequency Band, to Reallocate the 29.5 - 30.0 GHz Frequency
Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed
Satellite Services, *First Report and Order and Fourth Notice of Proposed Rulemaking*, CC
Docket No. 92-297 (released July 22, 1996) ("*Fourth Notice of Proposed Rulemaking*").

^{2/} See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to
Redesignate the 27.5 - 29.5 GHz Frequency Band, to Reallocate the 29.5 - 30.0 GHz Frequency
Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed
Satellite Services, *Third Notice of Proposed Rulemaking and Supplemental Tentative Decision*,
CC Docket No. 92-297 (released July 28, 1995) ("*Third Notice of Proposed Rulemaking*").

No. of Copies rec'd
List ABCDE

49

No. of Copies rec'd
List ABCDE

restrictions on LMDS eligibility.^{3/} In particular, as Comcast showed, the increasingly competitive video marketplace had already virtually eliminated any ability or incentive of incumbent cable operators to use ownership of LMDS licenses to foreclose competition in the marketplace. Thus, even if LMDS were simply an alternative means of providing video programming, a cross ownership prohibition would be unnecessary and unwarranted.

But the potential uses of LMDS are not limited to traditional one-way distribution of video programming. Indeed, LMDS may also be used to provide a wide range of non-video telecommunications services, as the Commission recognized in the *Fourth Further Notice of Proposed Rulemaking*.^{4/} Making cable operators ineligible to acquire LMDS licenses would simply impair the ability of the most promising facilities-based competitors of incumbent telephone companies to offer such competition as efficiently -- and as quickly -- as possible.

While the Commission was considering the comments that were filed in response to the *Third Notice of Proposed Rulemaking*, Congress enacted the Telecommunications Act of 1996 (the "1996 Act"). Subsequently, several parties (including MCI and a group of state attorneys general) submitted *ex parte* comments suggesting that the pro-competitive policies of the 1996 Act would somehow be undermined by allowing incumbent cable operators and LECs to acquire LMDS licenses in their service areas. To the contrary, events in the last year -- including the enactment of the new law -- have only reinforced the policy imperatives for rejecting a cable-LMDS cross ownership restriction.

^{3/} See *Comments of the Joint Parties*, (Comcast Corporation, Cox Enterprises, Inc. and Jones Intercable, Inc.) (filed September 7, 1995).

^{4/} *Fourth Further Notice of Proposed Rulemaking* at ¶ 125.

I. COMPETITION IN THE VIDEO MARKETPLACE MAKES RESTRICTIONS ON CABLE-LMDS CROSS OWNERSHIP UNNECESSARY.

As the National Cable Television Association's comments demonstrate, competition in the video marketplace is strong and has intensified in the past year.^{5/} Three DBS systems unaffiliated with cable operators -- the largest of which is affiliated with AT&T -- are now competing vigorously to provide service nationwide. A fourth DBS service, to be offered by a joint venture of MCI and Fox, is in the wings and preparing to enter the market. MMDS has gained subscribers and enhanced its competitive viability. Moreover, with the 1996 Act's elimination of the cable-telco cross ownership prohibition, local exchange carriers such as Ameritech have begun to offer video programming over their own broadband wireline facilities in competition with incumbent cable operators.

Thus, comments asking the Commission to limit cable ownership of LMDS licenses in order to promote the entry of a "third" competitor in a market^{6/} are misplaced; the number of multichannel video programming distributors already exceeds three in virtually all communities, and the number of competitors is rapidly increasing. Also misguided are comments discussing the incentive that an "incumbent monopolist" might have to keep out new market entrants by "warehousing" LMDS spectrum. Cable operators are already subject to competition and will face an increasing number of competitors *whether or not* they acquire LMDS licenses in their service area.^{7/} Nor does it make sense to suggest that allowing cable operators to acquire LMDS

^{5/} *Comments of the National Cable Television Association, Inc.* at 3-4.

^{6/} *Comments of the Competition Policy Institute* at 4.

^{7/} *See, e.g., Comments of WebCel Communications, Inc.* at Exhibit A, "The Economics
(continued...)

licenses in their service areas might somehow lead to a "duopoly" between incumbent LECs and cable operators^{8/} when there are already a multitude of non-cable and non-LEC providers of video programming competing in the marketplace.

II. PROHIBITING CABLE OPERATORS FROM ACQUIRING LMDS LICENSES WILL UNFAIRLY IMPEDE THE DEVELOPMENT OF COMPETITION IN THE LOCAL TELECOMMUNICATIONS MARKETPLACE.

In addition to promoting competition in the video marketplace, the 1996 Act was intended to hasten the erosion of the LECs' facilities-based local exchange monopoly. Thus, at the same time as it eliminated the cable-telco cross ownership prohibition and other ownership restrictions that had outlived their usefulness, Congress removed and preempted many existing barriers to the competitive provision of local exchange service and required LECs to permit interconnection with and resale of their services on reasonable and non-discriminatory terms. Precluding cable operators from using LMDS spectrum as a means of facilitating and expediting their provision of telecommunications services would be directly at odds with these legislative actions and objectives.

Not only could such an ownership restriction delay the competitive entry of cable

7/ (...continued)

of Bidding for Scarce Resources: The Lessons of Monopoly Preemption as Applied to FCC Auctions of LMDS Licenses." Basic economic theory defines a "monopolist" as a party that can control a market and collect monopoly profits above competitive rates because other companies, for whatever reason, cannot enter the market and drive prices down to competitive levels. WebCel, despite its rhetoric about how a "ban" on cable and LEC holding of LMDS licenses will "improve social welfare," fails to explain how LECs and/or cable operators can be considered "monopolists," especially given the market-opening forces unleashed by the 1996 Act. *See also MCI Comments* at 4 ("MSOs have monopoly power. . .").

8/ *See Comments of ComTech Associates, Inc.* at 9-10.

operators in the local telecommunications marketplace, it would also place cable operators at an unfair competitive disadvantage vis-à-vis telephone companies and others in deploying and providing full service video and telecommunications networks -- even if the telcos were also barred from obtaining LMDS licenses. LECs and others that have not yet upgraded their facilities to provide wireline video programming are permitted to use wireless means -- specifically, MMDS and DBS -- to establish immediately a competitive beachhead in the already competitive video marketplace. It would be unfair and counterproductive to bar cable operators from similarly using wireless technologies such as LMDS to begin to erode the LECs' monopolies while cable operators are upgrading their facilities to provide wireline telecommunications services.

III. ANY RESTRICTION ON CABLE OWNERSHIP OF LMDS LICENSES SHOULD APPLY EQUALLY TO *ALL* COMPETITIVE PROVIDERS OF VIDEO AND LOCAL TELECOMMUNICATIONS SERVICES.

If the Commission were nevertheless to bar cable operators from acquiring LMDS licenses in their service areas, it should apply the same prohibition to *all* competitors in the video programming marketplace. It would be bad enough, for example, to bar cable operators from using LMDS to enter local telecommunications markets while LECs and long distance carriers were permitted to use DBS and MMDS to enter the video programming marketplace. But it would be especially unfair and unwarranted to allow LECs and long distance carriers to acquire LMDS licenses as a *second* means of providing video and/or telecommunications services while making such licenses unavailable to cable operators.

For the reasons discussed above, there is no need to expand the number of competitors providing video programming by making existing providers ineligible for LMDS licenses. But

such a “one-to-a-market” rule would be ineffective and arbitrary if it applied only to some existing providers (*i.e.*, cable operators) and not to others. Moreover, if it were possible for existing providers of video programming to foreclose competition by acquiring and “warehousing” LMDS spectrum, MCI -- which recently paid more than \$600 million for a DBS license -- would certainly have as much incentive as incumbent cable operators to keep out additional competitors. Indeed, while MCI contends that allowing cable operators and LECs to acquire LMDS licenses would lead to “abuse of incumbent monopoly power,”^{9/} what MCI seeks is a rule that would give it an unfair competitive advantage by tying the hands of its competitors.

CONCLUSION

For the foregoing reasons, now more than ever, there is no policy basis for banning cable operators from obtaining LMDS licenses in their service areas. And there is especially no basis for applying such a prohibition solely to cable operators and not to other competitive providers of video programming and local exchange service. Cable operators today face competition from all sides, and they have neither the ability nor the incentive to purchase spectrum in a vain attempt to keep others out of their traditional video services market. If cable operators choose to participate in the LMDS auctions and acquire LMDS spectrum they will do so in order to expand the types of service offerings they can provide to customers. LMDS is just one tool cable

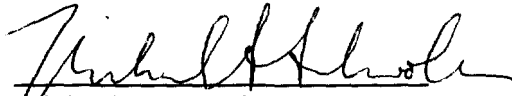
^{9/} *MCI Comments* at 4.

operators might use to reach new customers. Restrictions on cable operator ability to use LMDS will do nothing more than skew the market and keep competition from reaching its full potential.

Respectfully submitted,

COMCAST CORPORATION

By:

A handwritten signature in dark ink, appearing to read "Michael S. Schooler", written over a horizontal line.

Michael S. Schooler

Christina H. Burrow

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

August 22, 1996